

Communication to Record Substance of Interview

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Dated: June 15, 2009

Electronic Signature for Susan Pagano: /Susan Pagano/

Docket No.: H28240
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
David Spurduti et al.

Application No.: 10/825,088

Confirmation No.: 7165

Filed: April 15, 2004

Art Unit: 3687

For: Proximity Transaction Apparatus and
Methods of Use Thereof

Examiner: O. G. Ade

COMMUNICATION TO RECORD SUBSTANCE OF INTERVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madam:

INTRODUCTORY COMMENTS

Communication begins on page 2 of this paper.

REMARKS

A telephone interview was conducted June 15, 2009 between Examiner Oger Garcia Ade and the applicants who were represented by their attorney George S. Blasiak.

Mr. Blasiak began the interview by reading the following statement: "For the purposes of reducing the time of the interview, the interview will be focused on a limited number of issues, *i.e.* the rejection of independent claim 8 only. The focused nature of the interview will not be taken as an indication that arguments for unpatentability by the Examiner not discussed are conceded to be correct and appropriately made. The applicant expressly reserves the right, later in prosecution of the present application or another application, to challenge the propriety of the outstanding office action on grounds not discussed in the interview."

The interview focused on the rejection of claim 8 over U.S. Patent Publication No. 2003/0220876 to Burger ('Burger'). The Examiner relied on paragraph 0098 of Burger in making the rejection of claim 8 over Burger.

During the interview the applicants asked the Examiner to identify where in Burger in the relied upon paragraph [0098] of Burger there is a teaching or suggestion of "wherein, responsive to an indication that said processor module is not configured to perform said decoding correctly, said communication module is configured to request from said remote computer-based apparatus at least one machine-readable instruction for properly configuring said processor module to decode said data" as is recited in claim 8.

In response to the above inquiry, the Examiner during the interview declined to substantively attempt to identify the highlighted elements in Burger.

The Examiner did recommend, however, that applicants file a response to final Office action with a Request for Reconsideration. The Examiner indicated that in a communication following a Request for Reconsideration by applicants the Office would substantively respond to applicants request that the Examiner identify elements related

to "wherein, responsive to an indication that said processor module is not configured to perform said decoding correctly, said communication module is configured to request from said remote computer-based apparatus at least one machine-readable instruction for properly configuring said processor module to decode said data."

During the interview, the Examiner indicated that the Examiner is under no obligation to grant an interview after final. However, as the applicants highlighted in the concurrently filed Response to Final Office Action, the Manual of Patent Examining Procedure ("MPEP") specifically sanctions interviews after final: "normally, one interview after final rejection is permitted..." See *MPEP §713.09*.

Accordingly, in view of the above remarks, applicants believe all of the claims of the present application to be in condition for allowance and respectfully request reconsideration and passage to allowance of the application.

If the Examiner believes that contact with applicants' attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call applicants' representative at the phone number listed below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

Dated: June 15, 2009

Respectfully submitted,

Electronic signature: /George S. Blasiak/
George S. Blasiak
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